



September 10, 1999

Ms. Linda L. Sjogren
Assistant City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR99-2521

Dear Ms. Sjogren:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127835.

The City of San Angelo (the "city") received a written request for "all documentation, including internal and external correspondence regarding any legal action filed, threatened or implied to be undertaken" by a named city employee against the city. You explain that the city employee filed an EEOC complaint against the city and that the complaint has now been forwarded to the Department of Justice "for possible litigation." You seek to withhold the documents you submitted to this office as Exhibits A, B, C, and D from the requestor pursuant to section 552.103 of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). You explain that a city employee has filed a civil rights complaint with the Equal Employment Opportunity Commission ("EEOC") under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. You have provided this office with a copy of that complaint. The filing of such a complaint constitutes evidence that the likelihood of litigation against the city by the complainant/employee is more than mere conjecture. *See* Open Records Decision No. 386 (1983). Additionally, you have provided this office with a letter from the EEOC that notifies the city of the referral of the complaint to the Department of Justice for possible litigation. We therefore conclude that the city may reasonably anticipate litigation regarding the complaint with either the complainant, the Department of Justice, or both. We also

conclude that the records constituting Exhibits A, B, C, and D on their face demonstrate how they relate to the anticipated litigation for purposes of section 552.103.

This office has previously concluded that, absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). You have represented to this office, however, that the documents contained in Exhibit A, which consist of internal memoranda addressed to or from the complainant, have not been provided to the EEOC to the city's knowledge. Similarly, you represent that the documents contained in Exhibit B, which consist of correspondence from the city to the EEOC, have not been shared with the complainant. Because the city may reasonably anticipate independent lawsuits from both the complainant and the EEOC, we conclude that the city may withhold Exhibits A and B in their entirety pursuant to section 552.103. Further, because you state that the contents of Exhibits C and D have not been provided to either potential opposing party, these documents may also be withheld.¹

Finally, you contend that the contents of Exhibit E are protected from required public disclosure pursuant to the common-law right of privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Similarly, section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" In the context of government employment, however, the scope of information protected by common-law privacy is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

The information at issue pertains solely to the employee's allegations of employment discrimination by a governmental employer, and as such cannot be deemed to be outside the realm of public interest. The city may not withhold any of the documents contained in Exhibit E on privacy grounds. Because you have not raised any other exception to disclosure

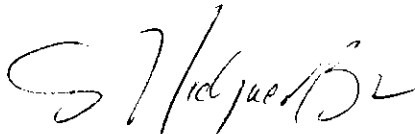
¹Because we resolve this aspect of your request under section 552.103, we need not address the applicability of the other exceptions you raise for these particular documents.

for these documents, the city must release the contents of Exhibit E to the requestor, with the following exception.

We note that some of the records in Exhibit E contain information that reveals the employee's home address and telephone number. Section 552.117(1) of the Government Code excepts such information from disclosure, but only if the employee requested that this information be kept confidential in accordance with section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). If the employee made the election prior to the date on which the city received the current records request, the city must withhold these types of information pursuant to section 552.117(1). Otherwise, these types of information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Burns", is written over a horizontal line.

Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/nc

Ref.: ID# 127835

Encl. Submitted documents

cc: Ms. Amanda Singer Bouligny
226 River Oaks Street
San Angelo, Texas 76903
(w/o enclosures)